

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	MX Group Numbers 9, 13, 140, 143, 170,
)	171, 215, 247, 254, 310, 444B, 446, 501,
Threshold Fair Distribution Analysis of 28)	503, 504, 507, 510, 511B, 514, 519, 521 529,
Groups of Mutually Exclusive Applications)	530, 533, 535, 537, 539, and 540
For Permits to Construct New or Modified)	
Noncommercial Educational FM Stations Filed)	
in October 2007 Window)	

MEMORANDUM OPINION AND ORDER

Adopted: November 3, 2009

Released: November 4, 2009

By the Chief, Audio Division, Media Bureau

1. On October 6, 2009, the Media Bureau (the “Bureau”) released a Memorandum Opinion and Order (the “*October 2009 NCE Order*”)¹ in which it performed threshold analyses of 28 groups of mutually exclusive applications for new or modified noncommercial educational (“NCE”) FM station construction permits under Section 307(b) of the Communications Act of 1934, as amended,² and identified the tentative selectee in each of the above-numbered groups.³ At the time of this action, the staff was unaware that, in light of several settlement proposals, two of the groups analyzed therein could be subdivided into smaller groups of mutually exclusive applications, thus enabling the staff to ultimately issue additional NCE construction permits. Accordingly, by this Memorandum Opinion and Order (“*Order*”), we hereby modify, on our own motion, the portions of the *October 2009 NCE Order* analyzing MX Groups 530 and 537 to the extent indicated below.⁴ Petitions to deny the application of any of the new tentative selectees identified herein must be filed within 30 days of the date of release of this subsequent *Order*.⁵

¹ See *Threshold Fair Distribution Analysis of 28 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window*, Memorandum Opinion and Order, DA 09-2172 (MB, rel. Oct. 6, 2009).

² 47 U.S.C. § 307(b); see also 47 C.F.R. § 73.7002; *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397-98 (2000) (“*NCE Order*”) (subsequent history omitted). A threshold “fair distribution” analysis is performed on mutually exclusive NCE FM groups only if applicants within the group propose to serve different communities and will provide a new first and/or second NCE aural service to a substantial population. The Bureau uses service area population data and certifications provided by the applicants to conduct a threshold analysis. See *October 2009 NCE Order* at Paragraphs 3-4 (explaining the stages in a fair distribution analysis and eligibility for a Section 307(b) preference).

³ The groups addressed in the *October 2009 NCE Order* consisted of applications that were filed or amended in October 2007, during the first filing window for NCE FM applications. See *Media Bureau Announces NCE FM New Station and Major Change Filing Procedures*, Public Notice, 22 FCC Rcd 15050, 15051 (MB 2007).

⁴ See 47 C.F.R. § 1.113(a) (providing the staff with discretion to modify or set aside an action taken under delegated authority within 30 days of public notice of that action).

⁵ See 47 C.F.R. § 73.7004(b).

I. MODIFIED GROUP-BY-GROUP ANALYSES

2. This Section contains narrative descriptions of our modified analyses, organized chronologically by group number. Unless otherwise noted, each component of the analysis is based on information provided by each of the respective applicants.⁶

3. **Group 530A.**⁷ This group consists of six applications for five different communities in New York. State University of New York ("State") has two applications in the group, one for Boonville, and the other for Norwich. WAMC also proposes to serve Norwich. The other applicants are: Central New York Citizens in Action, Inc. ("CNYCA") for Utica; Mars Hill Broadcasting Co., Inc. ("Mars") for Richfield Springs; and St. Anthony of Padua Roman Catholic Parish ("St. Anthony") for Greene.

4. All of the applications claim and document eligibility for a fair distribution preference.⁸ Five of the applications claim a preference based on a first NCE service. CNYCA does not, and therefore is eliminated. The first service claims of the remaining applicants are: State, 3,813 people with its Boonville proposal and 15,030 people for Norwich; WAMC, 18,133 people; Mars, 8,391 people; and St. Anthony, 17,413 people. State-Boonville and Mars are each eliminated because the next best proposal of State-Norwich would serve at least 5,000 more people. The remaining three applications (State-Norwich, WAMC, and St. Anthony) are comparable with respect to first NCE service.

5. When no proposal prevails on first service, we consider combined first and second NCE service population totals. State-Norwich would provide a first or second NCE service to 31,936 people (15,030 first service plus 16,916 second service); WAMC to 40,485 people (18,133 first service plus 22,352 second service); and St. Anthony to 48,303 people (17,413 first service plus 30,890 second service). Because St. Anthony would provide new NCE service to at least 5,000 more people than WAMC's next best proposal, St. Anthony is the tentative selectee in Group 530A.

⁶ Specifically, information relating to the applicants' Section 307(b) claims including, where applicable, populations receiving first and/or second NCE radio services were reported in applicant responses to Questions III(1) and (2) and associated exhibits.

⁷ Group 530, which originally contained 37 applications, is bifurcated as a result of multiple settlements in which 11 applications were dismissed at the request of the applicants and three applications were amended to eliminate all conflicts to all remaining applications in the MX group. The Bureau analyzed the remaining 23 applications together as part of a single MX group in the *October 2009 NCE Order*. Upon subsequent review, the Bureau determined that the prior settlements enabled MX Group 530 to be sub-divided into three independent groups of mutually exclusive applications. Accordingly, we consider Group 530A herein. Group 530B, consisting of fifteen applications, will be considered separately. Group 530C consisted of the mutually exclusive applications of Dominican Monastery of Mary the Queen ("Dominican") for Elmira, New York, and Northeastern Pennsylvania Educational Television Association ("NPETA") for Sylvania, New York. See FCC File Nos. BNPED-20071022ARS and 20071022APM. On November 2, 2009, Dominican and NPETA filed a settlement and amendments to their respective applications to eliminate technical conflicts. Accordingly, the Dominican and NPETA applications will be processed as singletons and will not proceed to a Section 307(b) analysis.

⁸ See CNYCA, State-Boonville and Norwich, WAMC, Mars, and St. Anthony Applications, Questions III(1), III(2), and associated exhibits. CNYCA claims that it would provide aggregated first and second NCE service to 15,304 of the 103,958 people encompassed within its 60 dBu contour; State to 5,871 of the 11,024 people within its proposed Boonville contour, and to all 31,946 of the 31,946 people within its Norwich contour; WAMC to 40,485 of the 41,871 people; Mars to 31,630 of the 45,340 people; and St. Anthony to 48,303 of the 90,612 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

6. **Group 530B.**⁹ This group consists of 15 applications for 13 different communities in Pennsylvania and New York. Three applicants in the group propose service to Titusville, Pennsylvania: Public Broadcasting of Northwest Pennsylvania, Inc. (“PBNP”), Muncy Hills Broadcasting, Inc. (“Muncy”), and Family Life Ministries, Inc. (“Family”). The other Pennsylvania applicants are: Calvary Chapel of Russell (“Calvary”) for Tidioute; Franklin Baptist Temple (“Franklin”) for Franklin; Forest Area Baptist Church (“Forest”) for Marienville; Thiel College (“Thiel”) for Greenville; Solid Rock Broadcasting, Inc. (“SRB”) for Grove City; Duquesne University (“Duquesne”) with two applications, one for Cranberry Township, and the other for Marion Center; Stabat Mater (“Stabat”) for Clarion; Muncy for Scandia; Archangel Broadcasting Corporation (“Archangel”) for Saxonburg; and Oil City Columbian Home Building Association (“OCCHB”) for Oil City. Seneca Nation of Indians (“Seneca”) proposes to serve Salamanca, New York.

7. Thirteen of the applications claim and document eligibility for a fair distribution preference.¹⁰ Muncy-Scandia and Forest each certifies that it is ineligible for a preference and, accordingly, these applications are eliminated. Of the remaining applications, 10 claim a preference based on a first NCE service. The following three applicants do not and, therefore, are eliminated: SRB, Franklin, and Seneca. The first service claims of the remaining 10 applicants are: Calvary, 19,679 people; Thiel, 16,555 people; PBNP, 18,632 people; Muncy-Titusville, 12,112; Duquesne, 30,788 people with its Cranberry Township proposal and 100,983 people for Marion Center; Stabat, 4,601 people; Family, 23,022 people; Archangel, 19,371 people; and OCCHBA, 5,670 people. Duquesne’s Marion Center proposal would provide first NCE service to at least 5,000 more people than its own next best proposal for Cranberry Township. Duquesne-Marion Center is therefore the tentative selectee in Group 530B.¹¹

8. **Group 537A.**¹² This group is comprised of three applications proposing to serve two different communities in Texas. Scurry County Junior College District (“Scurry”) and Templo Piedra Angular (“Templo”) would each serve Snyder, Texas. California Association for Research and Education Inc. (“CARE”) proposes to serve Rotan. Scurry and CARE each claims that it is eligible for a fair distribution preference.¹³ Templo acknowledges that it is not eligible for a preference, and therefore its application is

⁹ See *supra*, note 7.

¹⁰ See Calvary, Franklin, Thiel, SRB, PBNP, Muncy-Titusville, Duquesne-Cranberry Township and Marion Center, Stabat, Family, Archangel, OCCHBA, and Seneca Applications, Questions III(1), III(2), and associated exhibits. Calvary claims that it would provide aggregated first and second NCE service to 99,286 of the 101,360 people encompassed within its 60 dBu contour; Franklin to 17,067 of the 58,778 people; Thiel to all 24,250 of the 24,250 people; SRB to 18,465 of the 19,499 people; PBNP to all 43,961 of the 43,961 people; Muncy-Titusville to 12,112 of the 13,599 people; Duquesne to 121,180 of the 123,767 people within its Cranberry Township contour, and to 146,186 of the 227,235 people within its Marion Center contour; Stabat to 41,690 of the 41,989 people; Family to 81,007 of the 83,402 people; Archangel to 75,198 of the 109,526 people; OCCHBA to all 42,671 of the 42,671 people; and Seneca to 2,921 of the 8,284 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

¹¹ Duquesne-Marion Center’s application was previously tentatively selected to be awarded a new NCE FM station construction permit in the *October 2009 NCE Order*, and the application was accepted for filing October 6, 2009.

¹² The applications in Groups 537A and 537B were originally part of a single group of 19 applications and were analyzed together as a single mutually exclusive group in the *October 2009 NCE Order*. The Bureau staff, however, subsequently determined that Group 537 could be bifurcated into two sub-groups and evaluated independently. Accordingly, we consider Group 537A herein. Group 537B, consisting of sixteen applications, will be considered separately.

¹³ See Scurry and CARE Applications, Questions III(1), III(2), and associated exhibits. Scurry claims that it would provide aggregated first and second NCE service to all 24,342 of the 24,342 people encompassed within its 60 dBu contour. CARE claims that it would provide aggregated first and second NCE service to 6,718 of the 11,035 people

eliminated. Scurry claims that it would provide a new first NCE service to 24,342 people;¹⁴ CARE would provide new first NCE service to 6,718 people. Because Scurry would provide first NCE service to at least 5,000 more people than CARE, Scurry is the tentative selectee in Group 537A.¹⁵

9. **Group 537B.**¹⁶ This group is comprised of 16 applications proposing to serve eight different communities in Texas and New Mexico. Iglesia Shekira (“Shekira”), Hispanic Outreach Ministry, Inc. (“HOM”), and Hobbs Seventh-Day Adventist Church (“HSDA”) each proposes to serve Hobbs, New Mexico. Six applicants propose to serve Plainview, Texas: Top O Texas Educational Broadcasting Foundation (“TOTEB”), The Johnson Foundation (“Johnson”), Maranatha Church of Laredo Incorporated (“Maranatha”), Oasis of Faith, Inc. (“Oasis”), Educational Music Foundation (“EMusic”), and Grace Community Church of Amarillo (“Grace”). Templo and HOM each propose to serve Stanton, Texas. The remaining applicants, all proposing service to communities in Texas, are: Iglesia Jesucristo es mi Refugio, Inc. (“IJR”) for Crosbyton; Johnson for Aiken; Christian Ministries of the Valley, Inc. (“CMV”) for Brownfield; Promesa for Seminole; and Grace for Denver City.

10. Four applicants claim that they are eligible for a fair distribution preference.¹⁷ Shekira, HOM, IJR, TOTEB, Johnson, Maranatha, Oasis, Templo, EMusic, and Grace-Plainview each acknowledges that its respective application is not entitled to a fair distribution preference. Accordingly, each of these applications is eliminated. Of the remaining applications, three claim a preference based on a first NCE service. HSDA does not and, therefore, is eliminated. CMV claims that it would provide a new first NCE service to 6,685 people; Promesa to 11,728 people; and Grace-Denver City to 7,378 people. These three applications are comparable with respect to first NCE service. Accordingly, we consider combined first and second NCE service population totals. CMV would provide a first or second NCE service to 20,988 people (6,685 first service plus 14,303 second service); Promesa to 18,101 people (11,728 first service plus 6,373 second service); and Grace-Denver City to 7,378 people (7,378 first service plus 0 second service). Grace-Denver City is eliminated because the next best proposal of Promesa would serve at least 5,000 more people. The CMV and Promesa applications, however, are comparable, and therefore will proceed to a point hearing in a subsequent order.¹⁸

encompassed within its 60 dBu contour. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

¹⁴ On July 7, 2009, Scurry amended its application to specify a nondirectional antenna at a reduced effective radiated power of 24 kW. Scurry correctly noted that this technical change reduced the number of people it would serve with first or second NCE service and updated its Section 307(b) analysis to reflect this change. We have used the updated, lower numbers reported for this analysis.

¹⁵ We note that Scurry neglected to consider the service provided by its own NCE FM Station KGWB(FM), Snyder, Texas, in its analysis. By correctly including this station in the analysis, however, we have determined that Scurry would still provide a combined first NCE service to at least 5,000 more people than CARE’s proposal. Scurry’s application was previously tentatively selected to be awarded a new NCE FM station construction permit in the *October 2009 NCE Order*, and the application was accepted for filing October 6, 2009.

¹⁶ See *supra*, note 12.

¹⁷ See HSDA, CMV, Promesa, and Grace-Denver City Applications, Questions III(1), III(2), and associated exhibits. HSDA claims that it would provide aggregated first and second NCE service to 7,111 of the 36,926 people encompassed within its 60 dBu contour; CMV to 20,988 of the 39,256 people; Promesa to 18,101 of the 18,189 people; and Grace-Denver City to 7,378 of the 21,823 people. Thus, each would provide combined first and second NCE service to at least ten percent of the population within its 60 dBu contour and to more than 2,000 people.

¹⁸ See 47 C.F.R. § 73.7002(b). The point system analysis conducted when Section 307(b) is not determinative is considered a simplified “hearing” for purposes of 47 U.S.C. § 155(c)(1). See *NCE Order*, 15 FCC Rcd at 7420.

II. ADDITIONAL MATTERS

11. **Acceptability Studies.** Once the Bureau identifies a tentative selectee pursuant to the fair distribution process, the next step is to consider whether the selectee's application has defects.¹⁹ If found acceptable for filing, public notice of that fact is given, and petitions to deny may be filed within 30 days following the release of the public notice.

12. The Bureau has studied the applications of each tentative selectee identified herein and has determined that each is acceptable for filing. Each tentative selectee identified in this Order appears to be fully qualified to become the licensee of the new or modified NCE FM stations it has proposed. We tentatively conclude that the grant of their applications would serve the public interest, convenience, and necessity. It is our intention to grant each application if, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application. Such determinations of grantability may, of course, involve additional matters that may impact the timing or outcome of a decision. For example, a proposal to serve an area near the United States border with Canada or Mexico cannot become ripe for grant prior to the successful completion of international coordination.

13. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision with respect to any other group.

III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, That, pursuant to Section 1.113(a) of the Commission's Rules, the portions of the *Memorandum Opinion and Order*, DA 09-2172, addressing MX Group 530 and MX Group 537 ARE SET ASIDE and MODIFIED as set forth in Paragraphs 3-7 and Paragraphs 8-10 above.

15. IT IS FURTHER ORDERED, That each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and court appeals.²⁰ If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

16. **Group 530A.** IT IS FURTHER ORDERED, That the Application filed by St. Anthony of Padua Roman Catholic Parish (File No. BNPED-20071022BON) is ACCEPTED FOR FILING and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Greene,

¹⁹ If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days. The amendment must be minor and may not alter the fair distribution preference. See 47 C.F.R. § 73.3522(b)(1). The staff will not reinstate the application of a tentative selectee that is unable to cure all defects.

²⁰ See 5 U.S.C. §§ 702, 704, and 706; 47 U.S.C. §§ 309(d), 402(b), and 405; 47 C.F.R. §§ 1.106-08, 1.115, 1.120, and 73.7004. In cases that involve separate mutually exclusive groups but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. See, e.g., FED. R. APP. P. 3(b).

New York. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Central New York Citizens in Action, Inc. (File No. BNPED-20071015ALS), State University of New York (File Nos. BNPED-20071018ADU and 20071018AJE), WAMC (File No. BNPED-20071019ATI), and Mars Hill Broadcasting Co., Inc. (File No. BNPED-20071022AKT), and TO GRANT the application of St. Anthony of Padua Roman Catholic Parish (File No. BNPED-20071022BON) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

17. **Group 530B.** IT IS FURTHER ORDERED, That the Application filed by Duquesne University (File No. BNPED-20071019AYW) remains ACCEPTED FOR FILING and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Marion Center, Pennsylvania. If, after the 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Seneca Nation of Indians (File No. BNPED-20071018AAO), Muncy Hills Broadcasting, Inc. (File Nos. BNPED-20071019AYG and 20071019AZE), Calvary Chapel of Russell (File No. BNPED-20071012AUA), Franklin Baptist Temple (File No. BNPED-20071016AAG), Forest Area Baptist Church (File No. BNPED-20071016ABT), Thiel College (File No. BNPED-20071017ABX), Solid Rock Broadcasting, Inc. (File No. BNPED-20071018DEF), Public Broadcasting of Northwest Pennsylvania, Inc. (File No. BNPED-20071019AGH), Duquesne University (File No. BNPED-20071019AYS), Stabat Mater (File No. BNPED-20071022AGY), Family Life Ministries, Inc. (File No. BNPED-20071022AMO), Archangel Broadcasting Corporation (File No. BNPED-20071022ARQ), and Oil City Columbian Home Building Association (File No. BNPED-20071022AVA), and TO GRANT the application of Duquesne University (File No. BNPED-20071019AYW) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

18. **Group 537A.** IT IS FURTHER ORDERED, That the Application filed by Scurry County Junior College District (File No. BNPED-20071018AAH) remains ACCEPTED FOR FILING and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Snyder, Texas. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning the grantability of the tentative selectee's application, we intend, by public notice, TO DISMISS the mutually exclusive applications of Templo Piedra Angular (File No. BNPED-20071022AMQ) and California Association for Research and Education, Inc. (File No. BNPED-20071022BUT), and TO GRANT the application of Scurry County Junior College District (File No. BNPED-20071018AAH) CONDITIONED UPON that selectee's compliance with Section 73.7002(c) of the Commission's Rules, 47 C.F.R. § 73.7002(c), which sets forth a four-year period of on-air operations substantially as proposed.

19. **Group 537B.** IT IS FURTHER ORDERED, That the mutually exclusive Applications of Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABQ) and La Promesa Foundation (File No. BNPED-20071019ACK) WILL REMAIN TENDERED FOR FILING, pending further evaluation under the point system in a subsequent order. IT IS FURTHER ORDERED, That the Applications of Iglesia Shekira (File No. BNPED-20071018AYU), Hispanic Outreach Ministry, Inc. (File Nos. BNPED-20071022ANQ and 20071022ANM), Hobbs Seventh-Day Adventist Church (File No. BNPED-20071022AYY), Iglesia Jesucristo es mi Refugio, Inc. (File No. BNPED-20071017AIH), Top O Texas Educational Broadcasting Foundation (File No. BNPED-20071017AIS), The Johnson Foundation (File Nos. BNPED-20071018AMX and 20071018ANI), Maranatha Church of Laredo Incorporated (File No. BNPED-20071018ATX), Christian Ministries of the Valley, Inc. (File No. BNPED-20071019ABQ), La Promesa Foundation (File No. BNPED-20071019ACK), Oasis of Faith, Inc. (File No. BNPED-20071019ACS), Templo Piedra Angular (File No. BNPED-20071022AMR), Educational Music

Foundation (File No. BNPED-20071022BEZ), and Grace Community Church of Amarillo (File Nos. BNPED-20071022BQI and 20071022BQR) WILL REMAIN TENDERED FOR FILING pending the resolution of MX Group 537B under the point system in a subsequent order.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau